Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
1998 Biennial Regulatory Review--Reform of the International Settlements Policy and Associated Filing Requirements; Regulation of International Settlement Rates	)	IB Docket No. 98-148 CC Docket No. 90-337

COMMENTS OF GTE

Cheryl A. Tritt
Charles H. Kennedy
MORRISON & FOERSTER LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
Telephone: (202) 887-1500

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015-2092

Gail L. Polivy
GTE Service Corporation
1850 M Street, N. W.
Suite 1200
Washington, D.C. 20036

Their Attorneys

September: 16, 1998

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
1998 Biennial Regulatory Review--Reform of the International Settlements Policy and Associated Filing Requirements; Regulation of International Settlement Rates	)	IB Docket No. 98-148
	)	CC Docket No. 90-337

COMMENTS OF GTE

GTE Service Corporation and its affiliated carriers ("GTE")[1] agree with the Commission's conclusion that the public interest requires reform of the International Settlements Policy ("ISP"). However, the Notice of Proposed Rule Making ("NPRM")[2] does not sufficiently recognize the extent to which business and technological realities, as well as the advent of competition in WTO member countries, have marginalized the international settlements process and removed the public-interest rationale for the ISP. In fact, as GTE explains more fully herein, the ISP can do little in the present environment except facilitate price-signaling, weaken competitive incentives in

---

1 GTE Communications Corporation, GTE Telecom, GTE Hawaiian Tel International and GTE Pacifica. These GTE carriers are affiliated with foreign carriers in the Dominican Republic and Venezuela and the Canadian provinces of British Columbia and Quebec.

2 *1998 Biennial Regulatory Review; Reform of the International Settlements Policy and Associated Filing Requirements*; IB Docket No. 98-148, *Regulation of International Accounting Rates,* CC Docket 90-337, FCC 98-190, Notice of Proposed Rulemaking (rel. Aug. 6, 1998) ("NPRM").

international markets and undermine the commitments made by the United States in the WTO Basic Telecom Agreement. For these reasons, the Commission should eliminate the ISP and its associated filing requirements on all routes between the United States and WTO-member nations, regardless of the market shares of the foreign correspondent carriers involved.

SUMMARY AND INTRODUCTION

The ISP is an artifact of a time when all switched, international message traffic was subject to settlement agreements. In that environment, inequalities in bargaining power between the parties to settlement agreements posed a substantial threat to competition in international telecommunications. As the Commission correctly recognized when it instituted the ISP, under these circumstances a foreign monopolist negotiating with multiple U.S. carriers on an international route could effectively whipsaw its U.S. correspondents by demanding above-cost settlement rates and other concessions as the price of serving the foreign carrier's market.

The environment in which the ISP was instituted, however, bears no resemblance to the international telecommunications marketplace of today. Technologies and business arrangements that permit arbitrage of the settlements process, or bypass that process altogether, are not simply niche approaches to the transmission of international voice traffic: they are rapidly becoming the dominant means of carrying such traffic. Although the volumes of bypass and arbitrage traffic generally are not reported to regulators and cannot be quantified precisely, industry analysts and participants both attest to the growing dominance of those approaches. For example, as long as one year ago it was reliably estimated that "as much as 50% of

all international telephone traffic" is arbitraged,[3] and some experts estimate that in the coming year the capacity of international data networks, which can carry voice traffic not subject to settlements, will equal that of the existing international PSTN.[4] Similarly, the International Telecommunication Union ("ITU") estimates that as early as 1995, call-back services accounted for 22% of traffic from Asia to the United States.[5] And undersea cable traffic increasingly is carried over private cables constructed by financial groups rather than corresponding carriers. The result of these trends is clear: the present settlement system "will eventually disappear altogether"[6] and "will probably be dead by the end of the century."[7]

Under these circumstances, the utility and relevance of the ISP are rapidly becoming as marginal as the settlements process itself. The possibility that foreign monopolists will whipsaw U.S. carriers into sending switched traffic at inflated settlement rates – the *sole public-interest rationale* on which the ISP is based[8] -- fades

---

3 *Communications Week International* No. 187 p. 4 (June 30, 1997).

4 *Telecommunications (International Edition)*, February 1998. The International Telecommunication Union reportedly has predicted that 1998 will be the first year in which international Internet traffic will exceed traditional, circuit-switched voice traffic. "International Telecom Rates, Delayed Discounts," *Data Communications,* Vol. 27, No. 5, p. 39 (Apr. 1998).

5 "Down with Distance," *The Economist*, September 13, 1997 (p. S21) ("*Economist*").

6 "Asia: the Future," a Special Report by Merrill Lynch (Sept. 1997).

7 *Economist, supra.* See also Alan Cane, "Phone Call Prices Fall as Competition Bites," *Financial Times* (Oct. 9, 1996) p. 7 (stating that as bypass services proliferate, "the Accounting Rate System. . .will become redundant.")

8 *See Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes,* 59 Rad. Reg. 2d (P&F) 982 (1986) ¶ 3 (stating that "[t]he policy of uniform settlement rates arose in response to the unique situation in the international telecommunications arena which places single governmental or quasi-governmental entities from other nations in direct

(Footnote continues on following page.)

to insignificance when U.S. carriers simply can bypass settlement agreements that they find onerous. Accordingly, as further explained below, the only effect of the ISP in the present environment is to inhibit competition by reducing the incentive of carriers on international routes serving the U.S. to negotiate vigorously for lower settlement rates or seek arbitrage solutions.

Against this background, the Commission's proposal to retain the ISP for agreements with correspondents that are said to have "market power" in WTO-member home markets is not needed to prevent whipsawing, reinforces the anticompetitive effects of the ISP and perpetuates a route-by-route competitive analysis that is inconsistent with the Most Favored Nation principle of the GATS. Accordingly, GTE urges the Commission to apply its proposed market power test only to settlement agreements with correspondents from non-WTO countries. Nonetheless, if a competitive test is applied to correspondents in WTO countries, that test should be satisfied by any correspondent carrier that provides nondiscriminatory interconnection to the facilities of its competitors. GTE also recommends that if the ISP is eliminated for settlement agreements with a particular country, the requirement that settlement rates for that country be filed with the Commission should also be eliminated.

I. Enforcement Of The ISP For Agreements With Foreign Carriers From WTO Member Countries Is Not Necessary In The Public Interest

The Commission's statutory mandate, in this biennial review proceeding, is to repeal or modify any regulation that is no longer "*necessary* in the public interest."[9] The Commission's proposal to retain the ISP and related filing requirements for agreements

---

(Footnote continued from previous page)

negotiation with multiple private U.S. entities for the formation of operating agreements to arrange international services").

9 47 U.S.C. §161 (b) (emphasis added).

with foreign carriers from WTO member countries that fail a "market power" test does not meet this standard and should not be adopted. In fact, the ISP is not needed to prevent whipsawing of U.S. carriers by carriers from WTO member countries and will harm U.S. consumers by discouraging competition.

A. Partial Retention of the ISP Will Harm Competition

The NPRM correctly identifies three ways in which application of the ISP harms the public interest. First, the requirement that a foreign carrier's settlement rate with one U.S. carrier must be available to all U.S. carriers facilitates price signaling and reduces the incentive of U.S. carriers to negotiate aggressively with their foreign correspondents.[10] Second, the proportionate return requirement discourages U.S. carriers that have no history of outbound traffic on a particular route from initiating service on that route.[11] And finally, the uniformity and public availability of settlement rates under the ISP inhibit retail competition among U.S. carriers.[12]

Despite these acknowledged anti-competitive effects of the ISP, the Commission tentatively concludes that the interests of U.S. consumers will be served if the ISP is retained for settlement agreements with foreign carriers that possess a market share of 50 percent or more in a WTO-member destination country.[13] GTE strongly disagrees with this tentative conclusion which relies on market share. GTE believes that, in fact, there is no route involving a WTO-member country on which the ISP will have a net pro-competitive effect, regardless of the market share of the foreign carriers serving that route.

---

10 NPRM ¶ 9.

11 *Id.* ¶ 10.

12 *Id.* ¶ 11.

13 *Id.* ¶ 22.

This is especially the case on routes to WTO countries in which competitors are operating or have been authorized. If the settlement rates offered by the principal foreign carrier on such a route are required to be uniform and public, new entrants in the foreign market will not face competitive uncertainty in negotiating with U.S. carriers and will not seek alternative arrangements or negotiate aggressively to offer those carriers more favorable settlement rates. Instead, new entrants in the foreign market will offer U.S. correspondents settlement rates slightly lower than those offered by the principal incumbent. The result will be an aggregation of oligopoly markets, with the principal foreign incumbent in each WTO country as the price leader – not the robust and competitive market that this Commission's policies have sought to achieve. Accordingly, instead of eroding the supposed market power of foreign incumbents in WTO countries, the ISP will help to preserve that power.

Retention of the ISP is equally inappropriate for settlement agreements with carriers in WTO countries in which domestic competition is not yet authorized. In these markets, the rapid development of services and technologies that bypass the settlements process gives incumbent foreign carriers increasing incentives to offer more favorable net settlement rates to U.S. carriers. The ISP, however, by providing a method of price-signaling and reducing regulatory uncertainty, discourages U.S. carriers from taking an aggressive negotiating posture with foreign incumbents and prevents those competitive incentives from having their full effect.

The Commission's proposed "market power" test, in fact, reflects an outmoded view of the international telecommunications marketplace. A foreign carrier's share of its domestic national market is no longer a reliable indicator of that carrier's ability to impose above-cost net settlement rates. As explained above, services and technologies that bypass the settlement rates regime are rapidly creating an environment in which carriers that do not reduce settlement rates simply will lose the opportunity to collect them. Under these circumstances, imposing outmoded

regulations, such as the ISP, serves to retard the process of change and prevent or delay competition. Accordingly, the Commission should not retain the ISP for settlement agreements with all carriers from any WTO country.

B. Partial Retention of the ISP Is Not Needed To Prevent Whipsawing

The Commission's single rationale for retaining the ISP for some settlement agreements with carriers in WTO-member countries is the supposed threat of whipsawing.[14] This phenomenon was a credible threat when U.S. carriers provided switched, international telephone service exclusively through operating agreements with foreign PTTs that enjoyed exclusive franchises and faced not a single actual or potential competitor. Under those circumstances, the Commission correctly concluded that foreign PTTs could extract commitments to pay above-cost settlement rates, or divide settlement rates unequally, as the price of securing access to the destination country. What was a credible anticompetitive tactic in 1985, however, is an empty threat today.

First, U.S. carriers serving most WTO-member destination countries no longer must negotiate operating agreements with legally-protected monopolists. Instead, on most WTO routes U.S. carriers faced with an attempt at whipsawing can negotiate with a competing carrier in the destination market.[15] As implementation of the market-

---

14 NPRM ¶¶ 6-8.

15 The International Telecommunication Union reports that 74 percent of international telephone traffic already is open to competition. 34 *Asian Business* No. 7, pp. 22-27 (July 1998) (*"Asian Business"*). Even in WTO countries where domestic competitors are not presently operating, the market opening commitments of the WTO make those markets contestable and eliminate incentives for carriers in those countries to abuse U.S. correspondent carriers.

opening commitments of the Basic Telecom Agreement proceeds, this avenue of competition will be available in all WTO markets.[16]

Second, in WTO and non-WTO markets alike, and even in countries that have not introduced competition in basic, switched telephone service, alternatives such as ISR and switched hubbing have eroded the ability of foreign carriers to maintain above-cost settlement and collection rates. If, as GTE recommends, the Commission further relaxes its restrictions on these methods of bypass, any attempt at whipsawing in any destination market will simply result in wholesale diversion of traffic to private line-based or other bypass alternatives.[17]

In this transformed environment, the Commission's proposal to retain the ISP for agreements with foreign carriers that have a domestic market share of 50 percent or more in a WTO member country has no public-interest basis. No foreign carrier, regardless of market share, can durably and effectively whipsaw U.S. carriers in a

---

16 As this Commission pointed out in its Notice of Proposed Rule Making in the *Foreign Participation* proceeding, countries representing only 3 percent of the total basic telecommunications service revenues for WTO member countries have not made commitments to open their basic telecommunications markets. *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market,* IB Docket No. 97-142, FCC 97-195, (Order and Notice of Proposed Rule Making rel. June 4, 1997) ¶ 35 (*"Foreign Participation NPRM"*). As the Commission also pointed out, however, "it is reasonable to expect that [those] WTO members will make market access commitments for basic telecommunications services," and those countries are in any event subject to the GATS principles of MFN treatment and reasonable, objective and impartial regulation. *Id.* ¶ 36. For that reason, the Commission eliminated its ECO requirement for those WTO countries. *Id.* These same GATS obligations will bring increasing pressure on all WTO countries, including those that have not made complete market liberalization commitments, to permit increasing competitive entry into their domestic markets.

17 International voice traffic using the Internet protocol also bypasses the settlements system altogether and provides international voice service at a fraction of the cost of traffic subject to settlements. Although based on a technology that is at most three years old, voice over Internet service, which is not reported to the Commission, is growing exponentially and already is available to over 100 countries. *Asian Business, supra.*

market in which new entry is lawful and the means of bypassing onerous settlement rates are readily at hand. Accordingly, retention of the ISP for agreements with any carrier from a WTO country is not "necessary in the public interest" and should be rejected.

C. The Proposed Alternatives To The Market Power Test Do Not Serve The Public Interest

The NPRM also proposes a number of alternatives to the "market power" test. One such suggestion is to "decline to apply the ISP on routes where the Commission has already authorized ISR."[18] Another proposal is to "decline to apply [the] ISP on routes where at least 50 percent of the traffic is settled at a rate of $.08 per minute or less."[19] Still another suggested approach is to "decline to apply the ISP only in cases where 50 percent of the traffic on the route is settled at or below benchmark rates *and* the foreign market permits U.S. carriers to provide service via ISR."[20]

None of these suggestions, as applied to agreements with foreign carriers from WTO member countries, is necessary to protect the public interest. As these comments have demonstrated, the remote possibility of whipsawing in the present environment is far outweighed by the acknowledged anticompetitive impact of the ISP. This is the case regardless of whether ISR is permitted to a WTO country or that country's settlement rates meet an FCC benchmark. Accordingly, none of the proposed alternatives to the market power test need to be adopted. If the Commission adopts any test of a foreign correspondent carrier's market power, that test should require only that the correspondent carrier provide nondiscriminatory interconnection to the facilities of its

---

18 NPRM ¶27.

19 *Id.* ¶28.

20 *Id.* ¶29.

competitors. If nondiscriminatory interconnection in a WTO member market is assured, then the competitive forces already described will prevent effective whipsawing of U.S. carriers.

II. Enforcement Of The ISP For Agreements With Foreign Carriers From WTO Member Countries Violates The Commitments Of The United States In The WTO Basic Telecom Agreement

The WTO Basic Telecom Agreement incorporates the GATS principle of Most Favored Nation treatment – a comprehensive nondiscrimination principle that "requires each WTO Member to treat all other WTO Members similarly" – and the related requirement of reasonable, impartial and objective regulation.[21] These principles will be violated if the Commission applies the ISP to settlement agreements with carriers from WTO member countries that fail to meet one or more of the proposed route-by-route tests. Such a decision will violate the GATS requirement of reasonable, impartial and objective regulation by applying the ISP in circumstances in which it does not serve the public interest and inhibits competition. Similarly, application of the ISP to some WTO member country markets and not others - particularly in the absence of a rational basis for such disparate treatment - will violate the MFN principle. Accordingly, the ISP should be eliminated for settlement agreements between U.S. carriers and *all* carriers from WTO member countries.

III. Elimination Of The ISP Should Be Accompanied By Elimination Of The Associated Filing Requirements

GTE endorses the Commission's proposal to "decline to apply [the] Section 43.51 contract filing and Section 64.1001 accounting rate filing requirements" for any route on which the Commission no longer requires compliance with the ISP.[22] In light of

---

21 *Foreign Participation NPRM* at ¶ 22.

22 NPRM ¶ 30.

the Commission's conclusion that publication of settlement rates facilitates price signaling and discourages competition, there is no public interest basis for retaining the present filing requirements on those routes where the ISP itself is found not to be in the public interest.

GTE does not agree with the alternative proposals to mandate filing on a confidential basis, or to require filing of agreements with affiliated carriers or foreign carriers found to have market power in their home markets.[23] For reasons already stated, public filing of settlement agreements exacerbates, rather than moderates, any potential exercise of "market power" by a foreign carrier. The proposal to require confidential filings would not have this defect, but would serve a useful purpose only if settlement agreements with carriers in WTO countries presented a potential enforcement issue for the FCC. In the absence of any public interest rationale for regulation of settlement agreements on WTO-member routes, confidential filing would impose a needless regulatory burden on U.S. carriers.

IV. Revisions To The Flexibility Policy

GTE also agrees with the Commission's suggestion that the present flexibility rules will become irrelevant on all routes as to which the ISP is eliminated.[24] As GTE has stated, elimination of the ISP for settlement agreements with carriers from all WTO member countries is in the public interest, and elimination of the flexibility rules on those routes, therefore, is also appropriate.

On routes where the ISP is not eliminated, GTE agrees that the informational filing requirements of the present flexibility rules should be modified.[25] The present filing

---

23 *Id.*

24 *Id.* ¶ 36.

25 *Id.* ¶ 32.

requirements do not serve the public interest and discourage foreign carriers from negotiating favorable settlement agreements with U.S. carriers. GTE urges, however, that the present filing requirements be eliminated for agreements with all carriers from WTO countries -- not just those that pass a competitive test applied on a route-by-route basis. Discrimination among WTO countries with respect to filing requirements will not advance competition and may violate the Most Favored Nation obligations of the United States under the WTO Basic Telecom Agreement.

V. Revisions To ISR Rules

Although GTE welcomes the Commission's willingness to consider permitting limited ISR traffic on routes that do not qualify under the present rules,[26] the Commission's proposals do not go far enough. The acknowledged, growing value of ISR as a means of "arbitrage of the international settlement rate system," along with the fact that many of the United States' most important WTO member trading partners do not restrict ISR, strongly suggest that the United States is lagging needlessly in deregulation of this important service.[27] At the very least, the Commission now should declare that ISR is permitted on all routes to WTO member countries.

It is especially inappropriate for the Commission to restrict ISR on routes to WTO member countries for the purpose of preventing "one-way bypass." As the Commission pointed out over a year ago, "the WTO agreement substantially reduces the threat of one-way bypass."[28] As the Commission also pointed out at that time, under the WTO Basic Telecom Agreement, "U.S. carriers will have the opportunity to send U.S. outbound switched traffic over private lines to 52 countries, which represent

---

26 *Id.* ¶ 38.

27 *Id.* ¶ 37.

28 *Foreign Participation NPRM* at ¶ 50.

approximately 90 percent of total telecommunications revenues of WTO Member countries."[29]

Under these circumstances, any residual problem of one-way bypass presented by WTO member countries that have made no – or only partial – market opening commitments can be dealt with under the WTO dispute resolution procedure as violations of MFN and National Treatment obligations. The Commission should not deny U.S. carriers the opportunity to provide ISR simply as a means of countering a marginal threat that some of our principal WTO trading partners do not even perceive. Restrictions on ISR to WTO member nations are not "necessary in the public interest" and must be eliminated.

CONCLUSION

This biennial review proceeding offers the Commission an opportunity to eliminate policies and regulations that have been overtaken by technology and business ingenuity. The WTO Basic Telecom Agreement, along with bypass technologies that have made the settlements process increasingly irrelevant, have deprived the ISP and the Commission's

ISR restrictions of any public interest rationale when applied to our WTO member trading partners. Accordingly, those policies and regulations should be eliminated for all telecommunications services between the United States and WTO member nations.

---

29 *Id.*

September 16, 1998

Respectfully submitted,

GTE SERVICE CORPORATION AND
ITS AFFILIATED CARRIERS

By: _____

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015-2092

Gail L. Polivy
GTE Service Corporation
1850 M Street, N. W.
Suite 1200
Washington, D.C. 20036

Their Attorneys

Cheryl A. Tritt
Charles H. Kennedy
MORRISON & FOERSTER LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
Telephone: (202) 887-1500